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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,179	06/29/2000	Yuan Chang	45185-CA/IPW/SHS	1263

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12/31/2002

John P White
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

LAMBERTSON, DAVID A

ART UNIT PAPER NUMBER

1636

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/607,179

Applicant(s)

CHANG ET AL.

Examiner

David A Lambertson

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 50 and 51.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

DAVID GUZO
PRIMARY EXAMINER
David Guzo

Continuation of 2. NOTE: The newly drafted claims raise new issues because they broaden the scope of the invention, thereby requiring further search and consideration. First, the newly drafted claims no longer contain the limitation that the nucleotides encoding the peptide be 30 nucleotides in length, stating only that "at least a portion of a nucleic acid" encode the polypeptide. Therefore the number of potential peptides that are encoded by the nucleotides has been increased because sequences that are shorter than 30 nucleotides (and the resulting peptides) must now be considered. These new peptides would require a new search and resulting consideration since they were not previously indicated in the finally rejected claims. Second, the newly drafted claims do not contain the limitation that the defined herpesvirus be recoverable from the HBL-6 cell line, therefore the number of viruses that can be defined by the peptide has been increased. This would also require a new search and resulting consideration. Because the claims have been broadened in scope for the above mentioned reasons, they do not place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Continuation of 5. does NOT place the application in condition for allowance because: applicant's arguments regarding the allowability of the claims are dependent upon entry of the amendments, and since the amendments have not been entered, applicant's arguments are moot.